

Zoning Map Amendment Request for the Suzanne Family Irrevocable Trust

To the Honorable Frederick County Planning Commission and Planning Staff,

This rezoning application is being submitted on behalf of the Suzanne Family Irrevocable Trust, owner of contiguous parcels totaling 257.82 acres located between the First Energy Doubs Substation, Basford Road, US Route 15 and Ballenger Creek Pike. The proposal will be to construct a data center campus on the parcels which would require a critical digital infrastructure use. The CDI use designation is currently permitted under general industrial zoning. The site is an appropriate candidate for this use as it is currently bounded by more than 341 acres of General Industrial zoned property owned by First Energy, is less than 1 mile from the Quantum Loophole and Windridge sites, is on the route of planned road expansions, is already bisected by multiple towers supporting 230KV high transmission power lines and will also be the location of new underground fiber optic cables. The Ballenger Creek site offers enough acreage that in conjunction with the Quantum Loophole and Windridge sites it would offer the opportunity to centralize the Frederick County Data Center Infrastructure and limit impact elsewhere in the county, eliminating serious issues such as utilizing eminent domain for power lines and utility commission delays.

Since the previous comprehensive rezoning more than a decade ago there has been a substantial amount of change in the area. Some of these changes include but are not limited to:

- In February of 2023 the Windridge property also located on Ballenger Creek Pike was recommended for rezoning, although it lacked the presence of heavy infrastructure on site or a directly neighboring site with General Industrial zoning, both of which the subject property has.
- In February of 2023 it was learned that QLoop would be running fiber either through the easement on the subject property or through the property itself.
- In December of 2022 Aligned Data Centers announced construction plans for 1.7 million square feet of data center proximate to the Ballenger Creek Site.
- In October of 2022 First Energy announced the construction of a new 1000 Megawatt capacity substation approximately one mile from the Ballenger Creek site and interconnected with the Doubs substation directly connected to the site.
- In September of 2022 First Energy announced a substantial expansion of the Doubs substation, which directly borders the Ballenger Creek site.
- In June of 2022 QLoop began tunneling and trenching their fiber network into Frederick County.
- In June of 2022 Quantum Loophole began construction on its Gigawatt capacity data center campus.
- In March of 2022 Frederick County amended laws to encourage Data Center development.

- In 2021 Quantum Loophole purchased the Alcoa aluminum foundry.
- In 2020 the Maryland General Assembly passed laws specifically to encourage Data Center development within Maryland, including a sales tax exemption.
- The Frederick County office of Economic Development established a page dedicated to encouraging Data Center investment and development in the county.
- In 2019 a 36,518 square foot industrial style metal warehouse was constructed at 2500 E Basford Road, across from the subject property. This warehouse has a steady flow of tractor trailers entering and exiting the property.
- In 2019 the Livable Frederick Master Plan was adopted and included references to a future development corridor running from Eastalco to Point of Rocks, which would place the Ballenger Creek site directly in its path.

The unexpected and rapid changes occurring in the neighborhood since 2021 would leave the Ballenger Creek site in the position of being subjected to expansions at the GI zoned Doubs substation, one of the largest in the Mid-Atlantic region, as well as ongoing excavation and construction on the Ballenger Creek site itself to accommodate the fiber optic cables being run to the adjacent sites. Unlike the Windridge site, the Ballenger Creek site already has the necessary power on site and will host the fiber optic line without the need to impact any other properties. This will not only greatly minimize the construction related disruptions in the area as opposed to other sites including the recently approved Windridge parcel, but also would eliminate any impact on the community generated by the Utility Commission which would invariably extend any development process by a minimum of 3-4 years and drive vital investment resources away from Frederick County. As can be seen from recent developments in Fauquier County Virginia, the overwhelmingly largest point of resistance for developing data centers is the construction of new high transmission lines to accommodate them. The proposed Ballenger Creek site already hosts these lines and would certainly be preferable to one that does not from an opposition perspective.

Our proposal for the Ballenger Creek Site, as it relates to these surrounding uses, is the viable option for the property. The subject property is located in the Livable Frederick Growth Corridor, which has been determined to be the “predominant economic engine and the landmark for high design standards.”

Justification

The Suzanne Family Irrevocable Trust respectfully submits the following justifications in support of its application for a zoning map amendment for +/- 257.82 AC on the south side of the intersection of East Basford Road and MD Route 351 - Ballenger Creek Pike (01-012639, 01-032100, 01-005154) (the “Ballenger Creek site” or the “subject site”). We request rezoning from Agricultural (A) To General Industrial (GI) to allow for Critical Digital Infrastructure (“CDI”) uses.

The Ballenger Creek site is currently in Agricultural use and is one of multiple farming properties owned by the The Suzanne Family Irrevocable Trust. The property was originally

acquired to serve as a hub for a corn extrusion business owned by the Trust, however those plans were suspended due to the ongoing developments occurring in the neighborhood. There is a mix of Industrial, residential, and agricultural use properties bounding the property; the Property is bound to the south (Potomac Edison) by a large General Industrial (GI) zoned property which hosts the largest substation in the Mid-Atlantic region as well as a large expansion area. Some of the agricultural use properties adjoining the property also host demonstrably non-agricultural activity, such as the junk yard visible from US-15. The property is less than 1 mile from the EastAlco site and the Quantum Loophole Gigawatt Campus.⁽¹⁾

Considerations

Below please find the relevant portions of the Frederick County Code, followed by our response.

§ 1-19-3.110.4. APPROVAL CRITERIA

(A) Approval or disapproval of a request for an individual zoning map amendment or floating zone reclassification shall be determined through review of several criteria. The Planning Commission and County Council review will include, but not be limited to:

(1) Consistency with the comprehensive plan;

The requested zoning change from AG to GI to support CDI use is consistent with objectives laid out in the Livable Frederick Master Plan. The LFMP lays out a variety of goals to promote development in the county that is economically advantageous as well as socially and environmentally responsible. Some of the criteria laid out in the LFMP include:

- Frederick County provides interesting and fulfilling jobs and options for everyone to support their families.
- We embrace businesses of all types and sizes to ensure a vibrant and strong economy.
- We value our traditional industries while seizing the opportunity of the future, healthcare biotech, advanced technology, and more.
- Pro-Business Climate - Attract, retain, and grow opportunities to create a business climate in Frederick County that is attractive to firms and supportive of the many diverse groups of people, with diverse expertise and experiences, who wish to live and work in Frederick County.
- Infrastructure - Ensure that infrastructure needed to support and maintain Frederick County as a great place to live and work is in place to meet the needs of residents and the business community by expanding, augmenting, or creating new infrastructure as opportunities expand to live and work in Frederick County.

The requested rezoning to support CDI uses on the Ballenger Creek site would not only provide a tremendous economic boon to the county directly but would also create a cascade of additional financial growth that would benefit the residents of Frederick County. As evidenced

from similar projects in Virginia the presence of data centers not only provides an enormous amount of tax revenue but also drive the development of additional jobs and services in the area. The annual infusion of hundreds of millions of dollars in revenue to the county would allow for a tremendous infusion of resources into the school system, infrastructure, and incentive programs to attract desirable development to the area. These developments in turn will attract people with diverse backgrounds, expertise and experiences to the county and perpetuate further positive and responsible growth in Frederick County. Rezoning the Ballenger Creek site to allow for CDI uses will meet all the goals laid out by the LFMP, create a CDI planning model for other counties around the country to follow and provide a boon to Frederick County for generations to come.

(2) Availability of current and planned public facilities;

The Ballenger Creek Site is approximately 2 miles from existing water and sewage services. By focusing on air cooled CDI uses rather than water cooled we anticipate minimal impact on the county infrastructure. From a site work standpoint interconnection would be rather straightforward due to the non-challenging terrain between the site and the presence and planned expansion of services both to the north and south of the site.

The Property has direct access to Ballenger Creek Pike and East Basford Road. The project itself could potentially provide direct funding for improvements to the East Basford Road entrance from US-15. Due to the nature of CDI campuses and the low density of employees per square foot, the anticipated traffic impact on the area would most likely be lower than that of continued agricultural use and certainly far lower than the alternative use of agricultural processing which is evidenced by the frequent arrival and departure of tractor trailers from the adjacent District Farms parcel (01-005146).

Any site plan submitted for the property would comply with the “Adequate Public Facilities Ordinance” requirements laid out by the county.

(3) Adequacy of existing and planned future transportation systems;

Please see above.

(4) Compatibility with existing and proposed development;

Rezoning the Ballenger Creek site to allow for CDI use would be consistent with the expansion of CDI properties to the north and the large substation bordering the property to the south. Concentrating the Frederick County data center corridor along this stretch of Ballenger Creek Pike not only consolidates CDI development in an aesthetically pleasing manner by at least partially masking the presence of the existing enormous substation but also would provide a commonsense boundary between two large existing industrially zoned pockets. The Ballenger Creek site is already directly subjected to the impact of the expansions occurring both to the

north and south of it as evidenced by the excavations to support the installation of fiber bisecting the property.

(5) Population change, including availability and location of land zoned to meet the ten-year need for residential development;

The presence of the substation and high transmission lines make the site untenable for any future residential development.

(6) The timing of development, planned future transportation systems and planned public facilities;

The timing of the development would line up in the most advantageous manner possible for the County as it would greatly reduce the amount of time needed for the site to be up and running since there would be no need for the Utility Commission to approve additional tower construction and would also buy the county a substantial of time before needing to consider any future expansions since the additional capacity made available by the Ballenger Creek site is incredibly substantial. The impact on public facilities would be minimal and transportation would likely yield a net positive compared to alternative by right agricultural uses. Considering the recent developments regarding temporary power shortages in Northern Virginia and the willingness of Data Center companies to expand in a meaningful way into Maryland for the first time as a result, we feel the timing could not be more advantageous for Frederick County and hope to take advantage of this unique window of opportunity.

(7) Sensitive environmental resources have been identified and impacts to these resources are avoided or minimized to the maximum extent practicable; and

Any site design to be submitted will not only comply with any requirements laid out by the state, the county and any other relevant authority but should ideally yield a net positive increase in the amount of tree cover compared to the current use.

(8) Historic resources have been identified and impacts to these resources are avoided or minimized to the maximum extent practicable.

It has been determined no such resources exist on or near the Ballenger Creek site after multiple studies were conducted to support the potential use of the property for a power plant, fishery or solar power generation facility.

(B) In addition to the criteria above, approval or disapproval of a request for an individual zoning map amendment shall be granted only where a finding has been made that there was:

(1) A substantial change in the character of the neighborhood where the property is located;

A markedly substantial change in character of the Ballenger Creek site's neighborhood has occurred since the 2012 County Comprehensive Plan and the 2019 adoption of the LFMP. The CDI zoning classification did not exist at the time of the 2019 adoption of the LFMP and was no reasonable way the LFMP could anticipate the CDI related developments now occurring in the area.⁽²⁾

In 2019 a warehouse type facility was built on the agriculturally zoned property at the District Farms property across East Basford Road from the Ballenger Creek site. The District Farms warehouse is a substantially sized structure visible from US-15 and generates a significant amount of tractor trailer traffic.

From 2020 onwards a deluge of changes began to develop regarding CDI infrastructure in the area. Ranging from legislative actions promoting CDI use within the state and the county to the acquisition and construction of sites for CDI use or their support, there has been a significant increase in activity not only adjacent to the site but also on the site itself to support the QLoop development. The QLoop site was acquired in 2021 to host a "Gigawatt Hyperscale Data Center Campus" which would be one of the largest in the world, less than a mile from the Ballenger Creek site. Construction activities began in late 2022 which are now on the cusp of directly entering the Ballenger Creek site due to the necessity of running fiber optic lines through the site to reach the QLoop development. By rezoning the Ballenger Creek site the county would be providing enough expansion area in a responsible and well thought out manner to allow for the time to consider the feasibility of any future expansions while at the same time not depriving the county of any of the economic benefits derived from the Data Center developments.

These developments when considered cumulatively leave no doubt as to the substantial change of character in the area around the Ballenger Creek site, specifically between the Doubs substation and the QLoop project.⁽³⁾ The proposed Ballenger Creek site also eliminates one of the only concerns associated with the Ashburn Data center developments, which is the hodge-podge nature of their placement throughout the county. By concentrating all data center development adjacent to the existing sub-station and the existing high transmission lines Frederick County has the unique opportunity to create an aesthetically pleasing and low impact tech corridor along Ballenger Creek Pike.⁽⁴⁾ Due to the size of the Ballenger Creek site and its proximity to the QLoop site Frederick County can not only match but potentially exceed the total capacity of Loudoun County and do so in a much more efficient and responsible manner. Due to the critical nature of this infrastructure and the heavy reliance of the Federal government on these sites, it would be certain to attract additional Federal spending to the county as well. Loudoun County will receive more than 576 million dollars in tax revenue from data centers in 2023, a figure that does not even take into account revenue generated via real estate taxes.⁽⁵⁾ This potential financial infusion for Frederick County provides an opportunity for meaningful equity and growth far into the future.

For all the aforementioned reasons we respectfully request the approval and support of the Frederick County Planning commission and Planning Staff in our rezoning request. We welcome any opportunity to meet and engage with any interested parties.

Respectfully,

Sam Fadul

The Suzanne Family Irrevocable Trust

2404 Ballenger Creek Pike LLC

2518 Ballenger Creek Pike LLC

1 "Maryland Commerce, Frederick County Announce Purchase of Former Alcoa Eastalco Site."

<https://commerce.maryland.gov/media/maryland-commerce-frederick-county-announce-purchase-of-former-alcoa-eastalco-site>

2 The Maryland Court of Appeals articulates that for a legislature to rezone property based on change, "there must be a satisfactory showing that there has been significant and unanticipated change in a relatively well-defined area (the 'neighborhood') surrounding the property in question since its original or last comprehensive rezoning, whichever occurred most recently." Mayor & Council of Rockville v. Rylyns Enterprises, Inc., 372 Md. 514, 538, 814 A.2d 469, 483 (2002).

3 "Regarding the evidence presented to show a change has occurred, the Maryland Court of Appeals has further ruled that changes in the neighborhood should be evaluated cumulatively '...determining whether the aggregate changes in the character of the neighborhood since the last zoning were such as to make the question fairly debatable.'" Bowman Grp. v. Moser, 112 Md. App. 694, 700, 686 A.2d 643, 646 (1996)

4 "The ultimate task of the zoning authority is to "make a factual determination, based on the evidence of record, as to whether there has been a change in the physical character of the neighborhood where the property is located" Anne Arundel County v. Bell, 113 A. 3d Md. App. 649 (2015)

5 "https://www.loudoun.gov/DocumentCenter/View/170612/FY-2023-Adopted-Budget---Volume-1"